1952.

File No. O. Electricity 52

Legal Deptt.

BRANCH

P.15(E)

Subject:— Operations under the Indian Electricity Act 1910

File No. O. Electricity/52

Gen. 194 a.

573-A

C O N T E N T S.

Legal Department File No. C. Electricity / 1952

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Office of the R.L.A.

It appears that the proprietors of the Ghanshyam Mills and the Mahalaxmi Textile Mills have executed agreements with the Combay Electric Supply and Instustrial Co. guaranteeing a minimum monthly sum for the supply of energy to their mills. The Electric Supply Company is finding that the minimum monthly sum guaranteed under the agreements was not sufficient to give a reasonable return on the capital expenditure and they requested Government to allow them to disconnect the supply to both the companies. The Ghanshyam Mills and the Mahalaxmi Textile Mills are not agreeable to pay any higher minimum sum. They appear to contend that so long as the agreements are subsisting the Electric Company has no right to claim any higher minimum sum and that the proviso to section 22 of the Indian Electricity Act, 1910, whereunder the claim has been made by the Electricity Company, has no application inasmuch as it applies only to prospective consumers. The R.L.A. is requested to advise whether the dispute can be referred to arbitration under the proviso to section 22 of the Indian Electricity Act, 1910.

2. The proviso to section 22 of the Indian Electricity Act, 1910, provides that no person shall be entitled to demand or to continue to receive from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay such minimum annual sum as will give him a reasonable return on the captial expenditure and will cover other standing charges incurred by him in order to meet the possible maximum demand for these premises, the sum payable to be determined in case of difference or dispute by arbitration. The words "to continue to receive" in the proviso clearly contemplate the persons who have already been receiving a supply. Consequently, the contention of the Ghanshyam Mills and the Mahalxmi Textile Mills that the proviso to section 22 is

applicable only to prospective consumers is not tenable.

3. It is true that the agreements executed by the Ghanshyam Mills and the Mahalaxmi Textile Mills fix the minimum monthly sum payable by them to the Electric Company for the supply of energy and these agreements are still subsisting. However, the proviso is intended for the object of ensuring a reasonable return; and, if for any reason the achievement of that object becomes involved in dispute, even a subsisting agreement would have to be revised by the method of arbitration. It appears from the report of the Electrical Engineer to Government that the Ghanshyam Mills which had originally installed 22 H.P. engine in the year 1943 prior to taking the supply has now replaced it by a 30 H.P. engine in the 1947 and that the Mahalaxmi Textile Mills which had originally installed a 10 H.P. engine prior to taking electric supply in the year 1947 has now installed a 33 H.P. engine. Apparently, therefore, such installations have tended to reduce the demand for the supply of energy and impliedly have involved variations in the terms and conditions of the agreements. In these circumstances it would be open to the Company to demand that since the Ghanshyam Mills and the Mahalaxmi are not agreeable to pay a higher minimum sum, the matter should be referred to arbitration under the proviso to section 22.

Sd/- P.M.Lad

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O.C. Remembrancer of Legal Affairs

U.R. to F.W.D.No. 10572, dated the 26th June 1952.

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L.D., F.I. NO. 10283 dated 24-5-52.

Submitted with reference to the note of the Finance Department and the Secy's note at pp. 65-66 ante.

The facts of the case may be summarised as under:-

The scheme for electrification of 21 villages in Satara Taluka and 10 villages in Bulsar Taluka has been sanctioned in G.R.No. 6730/36/4, dated 11-2-1949. Under this Scheme it has also been provided to make electricity available for street lighting. The question has arisen as to whether street lighting should be restricted only to the villages having Village Panchayats or it should be extended to all the villages having no Village Panchayats also. The important point for consideration is what arrangements could be made to collect street lighting charges from the villages having no Village Panchayats. The Presidents of the District Local Boards, Satara and Surat have intimated that their Boards are not willing to assume the responsibility in the matter. The D.L.B., Satara has suggested that Govt. may establish Village Panchayats at all the villages making special cases where necessary. The with the leaders of the villages concerned. In the P.W.D. office note, it is stated that the leaders of the village to whom street lighting is proposed to be given, have promised to pay every year in advance the annual charges. The Secy. P.W.D. thinks that "this seems to be the quickest and the safest method of recovery."

The Finance Department is of the view on surface, the proposal of mak making payment of annual charges of street lighting in advance appears to be all right but it is very doubtful that payment in advance to be made every year will be exactly the amount due to the Govt. for the actual expenses involved. If the premises of village leaders do not materialise, there is no

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security behind those premises. As the District Local Boards have declined to undertake the responsibility of paying the charges of street lighting, the F.D. has not therefore agreed to the proposal but advise the P.W.D. to ask the villages to form the village pancha yats which may provide the necessary arrangements regarding street lighting.

The Secy., F.D. does not think it safe to depend on the premises of the leaders of villages to pay every year in advance the annual charges. His view is that "if a permanent arrangement is decided, either the agreemnt should be with a body like the village panchayat with the capitalised value of the estimated cost."

With the above remarks of the Secy. F.D., the papers have been sent to the R.L.A. to advise in the matter.

This is a general reference. No question of law has been referred to the R.L.A. Nor do the papers disclose any specific question of law involved in the case . However the above views of the Secy. F.D. are preferable to the mere premises of the leaders of the villages to pay the annual charges in advance, as there are many a slip between the cup and a lip. In thematter of finance there should be pucca arrangements like the formation of village panchayats. etc.
Reply may be "Seen and Returned."

Sd/-
23-6-52
D.S./Civil/ Reply may be:-

Seen and returned the view taken by Secy FID. is correct. As indicated by him it is desirable to make a permanent arrangement to ensure payment of electricity charges before it is supplied for street lighting in villages.

Sd/- R.T.Katarki

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Seen and returned. The view taken by the Secretary, F.D. , is correct. As indicated by him it is desirable to make a permanent arrangement to ensure payment of electricity charges before it is supplied for street lighting in villages.

84/-P.M.Lad

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.C. Remembrancer of Legal Affairs

U.H. to F.D.No. 10670, dated the 27th June 1952.

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Submitted with reference to the note of the R.D. at p. 29 ante.

For full facts of the case, please see the letter dated 24-11-51 of the Collector of Poona at p. 7 ante.

Ther State area merged in the Bombay State on 1-8-1949. The arrears of Electricity duty from the month of October 1949 to May 1950 have not still been recovered from the consumers, by the Thopte Electric Supply Company Ther. The Company urges at p. 1 ante that the orders of the Mamlatdar were received on or about 7-6-1950 to recover the duty from ~~1st~~ 1-10-1949 when the bills for energy for the months - October 49 to May 50 had already been preferred and recoveries effected thereof and hence it was not possible to recover the duty for the said period. The duty has to be charged along with the bills as prescribed under Rule 2 of the Bombay Electricity Duty Rules. It has not been possible to recover the same on the presentation of supplementary bill for electricity and it is of the Mamlatdar is responsible for the non-recovery of the electricity duty and therefore the Mamlatdar should himself recover the arrears of Electricity duty from the public. The Company further urges that it is really harassing the people to effect recoveries from retrospective dates, when the department is at fault. The amount of arrears for the above period is stated to be Rs. 4,686-6-3.

urges that the laches and delay on the part

The Collector of Poona in his letter dated 24-11-1951 ~~the same~~ stated that the company has not taken any steps to recover the arrears of duty from the consumers. under section 24(1) of the Indian Electricity Act 1910, the company has got ample powers to effect the recovery of arrears in question. The Company's answer is that the Mamlatdar issued orders for recovery thereof as late as 7-6-1950 relating to the period from Oct. 49 to May 1950 retrospectively which was not legally feasible in view of Rule 2 of the Bombay

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Electricity Duty Rules. As the Company reported that the consumers are not willing to pay the duty, the Company was informed to take action under section 6(2) of the Bombay Finance Act 1932. As the company has failed to take actionunder section 6(2) , the company was informed that the dues will be recovered from the company i as an arrear of land revenue under section 9 of the Finance Act 1932. The papers have been sent to the R.L.A. with a request to advise, whether the licensee is deprived of his powers under section 6(2) of the Bombay Finance Act 1932 to collect the proper electricity duty payable by the Consumers, if he fails to include the electricity duty leviable under the Act. as a Separate item in the bill of charges for the energy supplied by him, in accordance with Rule 2 of the Bombay Electricity Duty Rules 1932.

The answer to the question is obviously in the negative.Rule 2 prescribed the time and manner of collection and payment of the electricity duty and though the words used are "shall inc-lude" but all the same if the licensee fails to include the electricity duty as provided therein for any reason, that does not mean that the licensee cannot recover the electricity duty from the consumers by the elec supplementary bills so long as t e amount is really due on account of the electricity duty from the consumers. This emission on the part of the licensee is at most an irregularity and no an illegality . Under section 9 of the Bombay Finance Act 1932, the Govt. has the option to recover the electricity duty either from the consumer or the licensee either through a civil court or as an arrear of land revenue. The proviso to section 6 of the Act, does not apply to this case, as the licensee on his own statement has already recovered its dues for the

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Sub-section (1) of section 6 of the Bombay Finance Act, 1932, provides that every licensee shall collect and pay to the Government at the time and in the manner prescribed the proper electricity duty payable under Part II on the units of energy supplied by him to consumers. The duty so payable shall be a first charge on the amount receverable by the licensee for the energy supplied by him and shall be a debt due by him to the Government. Rule 2 of the Bombay Electricity Duty Rules, 1932, made for this purpose provides that the licensee shall include the electricity duty l viable under the Act as a separate item in the bill of charges for the energy supplied by him, and shall recover the same from the consumer along with his own charges for the sup ly of such energy. Under section 6 it is the duty of the licensee to collect and pay the duty to Government. He is indebted to Government to the extent of the duty. At the same time under rule 2 of the Bombay Electricity Duty Rules, 1932, the licensee must include it as a separate item in the bill of charges for energy supplied and recover the same along with his own charges. In the present case the licensee failed to recover the duty along with his own charges. He did not include it as a separate item in his own bill. The question arises whether the licensee can now resort to sub-section (2) of section 6 for collecting the duty. The power under sub-section (2) of section 6 of the Act can be exercised by the licensee, as the opening words of that sub-section show, where any person fails or neglects to pay, at the time and in the manner prescribed by rule 2, the amount of electricity duty due from him. As the duty was not included as a separate item in the licensee's bills, it cannot be said that the consumers ffailed to pay the duty in the manner prescribed by rule 2. For that reason it would not be permissible for the licensee to resort to sub-section (2) of section 6. The view expressed in para of the---

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Sub-section (1) of section 6 of the Bombay Finance Act, 1932, provides that every licensee shall collect and pay to the Government at the time and in the manner prescribed the proper electricity duty payable under Part II on the units of energy supplied by him to consumers. The duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the Government. Rule 2 of the Bombay Electricity Duty Rules, 1932, made for this purpose provides that the licensee shall include the electricity duty liable under the Act as a separate item in the bill of charges for the energy supplied by him, and shall recover the same from the consumer along with his own charges for the supply of such energy. Under section 6 it is the duty of the licensee to collect and pay the duty to Government. He is indebted to Government to the extent of the duty. At the same time under rule 2 of the Bombay Electricity Duty Rules, 1932, the licensee must include it as a separate item in the bill of charges for energy supplied and recover the same along with his own charges. In the present case the licensee failed to recover the duty along with his own charges. He did not include it as a separate item in his own bill. The question arises whether the licensee can now resort to sub-section (2) of section 6 for collecting the duty. The power under sub-section (2) of section 6 of the Act can be exercised by the licensee, as the opening words of that sub-section show, where any person fails or neglects to pay, at the time and in the manner prescribed by rule 2, the amount of electricity duty due from him. As the duty was not included as a separate item in the licensee's bills, it cannot be said that the consumers failed to pay the duty in the manner prescribed by rule 2. For that reason it would not be permissible for the licensee to resort to sub-section (2) of section 6. The view expressed in para of the---

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the R.D. office note in this respect does not appear to be correct.

2. It would , however, be open to the licensee to forward supplementary bills to the consumers in respect of the amount of duty due from them since that amount was not included by the licensee in his bills of charges on account of an honest mistake on his part. If the consumers then fim fail to pay the duty it would be competent to the licensee to act under sub-section (2) of section 6.

Sd/- P.N.Lad

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O. . Remembrancer of Legal Affairs.

U.R. to R.D.No. 10852, dated the 1st July 1952.

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It appears that the Madiad Electric Supply Company incurred a loss of Rs. 35,384-13-5 during the years upto 31-3-1936 and, although it has distributed dividends on many occasions since 1937, the account of Rs. 35,384-13-5 has been carried over from year to year. In the accounts for the year ending on 31-3-1950 the Company has tried to appropriate to cover the loss of Rs. 35,384-13-5 under clause (c)(a)(i) of paragraph XVII of Schedule VI to the Electricity (Supply) Act, 1948. P.W.D. considers that this appropriation is wrong as the loss should have been wiped out when distributing dividends since 1937. E.L.A. is requested to advise

2. - The provisions in Schedule VI to the Electricity (Supply)Act, 1948, prescribe the manner in which the licensee should adjust his rates for the sale of electricity by periodical revision so that his clear profit in any year shall not as far as possible exceed the amount of reasonable return. "Clear profit" as defined in clause (2) of paragraph XVII of that Schedule means the difference between the amount of income and the sum of expenditure plus specific appropriations made up in such case as stated therein. Under sub-clause (c)(i) of clause (2) special appropriations sufficient to cover previous losses (that is to say excess of expenditure over income) which have arisen from the business of electricity supply to the extent in any year actually appropriated for the purpose in the books of the undertaking can be made ; The special appropriation contemplated by this clause is intended to cover previous losses to the extent such losses are in any year actually appropriated for the purpose in the books of the undertaking. The words "to the extent....." show that losses must themselves have been actually appropriated for the purpose previously. It is only then that a special appropriation to cover such previous losses is permissible. In other words to

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justify such appropriation the amount proposed to be appropriated now must have been actually appropriated for the purpose in the books of the undertaking previously. Unless, therefore, the amount of Rs. 35,364-13-5 which represents previous losses has been actually appropriated for the purpose previously in the books of the undertaking- and it has not been presumably so done previously- it would not be legally feasible to appropriate the/amount that now under clause (2)(c)(i) . Consequently, the Company would not be competent to appropriate this amount of loss under clause (2)(c)(i).

Sd/-P.N.Lal

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C.C. Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 10693 /dated 27th June 1952.

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Legal Department.

Submitted with reference to P.W.D. office note at p. 133 ante.

It appears that a 22 B.H.P. Crude Oil Engine has been installed more than twenty years ago at Bhadarva for running a water pumping pumping set and a small electric generator set for supplying the needs of the palacebuilding. The plant, it appears, is owned by the Thakurani of Bhadarva and is operated for generating electricity from 6 P.M. to 11 P.M. andfor working the water pump set from 2 p.m. to 5 p.m. The electricity generated by the plant was originally intended for being supplied to the State servants in addition to the palace but was later on supplied to certain other residents totalling about 50. After the integration of the Bhadarva State the manager of the Bhadarva Electric Power House was asked to obtain the license under the Indian Electricity Act, 1910. It has been contended on behalf of the Thakurani of Bhadrva that the generating set is intended purely for domestic supply and was never intended as a business concern. Recently the supply of energy to other consumers has been discontinued from 9-6-54 and has been restricted only to the palace building and for the private use of the Thakurani. The question raised for H.L.A. is consideration is whether the action of the power house authorities amounts to engaging in the business of supplying energy within the meaning of section 28(1) of the Indian Electricity Act, 1910.

2. In England it has been held that a person is not supplying energy to the public in a statutory sense unless that is his principal business. The same construction can be put upon section 28 of the Indian Electricity Act, 1910 (see Kerr's Electrical.

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Energy.....

Energy: pp. 96 and 214). In this case the power House at Bhadarva is intended for supply of energy to the place building and private use of Shrimati Jijiraj Kuverba Thakarani of Bhadarva and so long as the supply is restricted for such use the Thakarani would not be deemed to be engaged in the businesseof supplying energy within the meaning of said section 28(1) of the Indian Electricity Act, 1910. (Cf. R.L.A.'s opinion No. [illegible] Electric-2 dated the 16th June 1926, No. 209, dated the 27th January 1926 and No. 3576, dated the 13th May 1926.). The view taken by the Electrical Engineer to Govt. is not correct.

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D/S (civil) A S in para 2

Sd/-R.T.Katarki

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Indian Electricity Act, 1910. Business of supply of energy.

In England it has been held that a person is not supplying energy to the public in a statutoly sense unless that is h . principal business. The same construction can be put upon section 28 of the Indian Electricity Act, 1910 (see Mear's Electrical Energy: pp. 96 and 214). In this case the Power House at Khadarva is intended for supply of energy to the palace building and private use of Shrimati Dijiraj Kavarba Thakarni of Khadarva who is the proprietor of the power house and so long as the supply is restricted for such use, the Thakarani would not be deemed to be engaged in the business of sup lying energy within the meaning of said section 28(1) of the Indian Electricity Act, 1910(Cf. R.L.A.'s opinion No. 0 Electric-?, dated the 16th June 1928, No. 209, dated the 25th January 1926 and No. 3576, dated the 13th May 1946). The view taken by the Electrical Engineer to Government is not correct.

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O.C. Remembrancer of Legal Affairs.

U.R. to P.W.D.No. 21809, /A , dated the 24th December 1952.

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